IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 4021 of 2006(D)

PETITIONER:

K. KUMARI AMMA, PEON,
AISWARYA PRADAYANI U.P.SCHOOL,
KEERIKKAD, KAYAMKULAM, ALAPPUZHA DISTRICT.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.GEORGE T. THACHETT

RESPONDENTS:

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1. THE ASSISTANT EDUCATIONAL OFFICER,
KAYAMKULAM.

2. THE MANAGER, AISWARYA PRADAYANI
U.P.SCHOOL, KEERIKKAD, KAYAMKULAM,
ALAPPUZHA DISTRICT.

3. G.SREEKUMARI,
PART TIME SANSKIRT TEACHER,
AISWARYA PRADAYANI U.P.SCHOOL,
KEERIKKAD KAYAMKULAM, ALAPPUZHA DISTRICT.

BY SR. GOVERNMENT PLEADER SRI. T.T. MUHAMOOD
SRI.K.RAMAKUMAR
SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 4021/06

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DT. 13.10.86

EXT.P2. COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DT. 1.12.00

EXT.P3. COPY OF THE APPOINTMENT ORDER OF THE PEON DT. 2.1.01

EXT.P4. COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER IN JANUARY 2006 BEFORE THE 2ND RESPONDENT

EXT.P5. COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT

EXT.P6. COPY OF THE ORDER NO.B1/8257/06/(K.Dis) DT. 12.1.06 ISSUED BY THE DEO MAVELIKARA

RESPONDENT'S EXHIBITS:

EXT.R2(a). COPY OF THE LETTER OF THE 1ST RESPONDENT TO THE 2ND RESPONDENT BEARING NO.C-3158/06/K.Dis. DT. 14.8.06

EXT.R3(a). COPY OF THE COMMUNICATION DT. 14.2.06 ADDRESSED TO R1 BY THE PETITIONER

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 4021 OF 2006

Dated this the 23rd day of July, 2007

J U D G M E N T

Petitioner is stated to be working as a peon in the Upper Primary School under the management of respondent No.2.

2. Petitioner claims that if respondent No.3, who is now working as a part-time Sanskrit teacher, is promoted to the vacant post of Upper Primary School Assistant available in the school, she would be entitled to get the consequential vacancy of part-time Sanskrit teacher. But, the petitioner laments that the manager has managed the situation in such a way that respondent No.3 has now relinquished her claim for promotion to the post of Upper Primary School Assistant. Therefore the manager has appointed one Sindhu in the vacancy of UPSA.

3. The primary prayer in the writ petition is to issue a writ of mandamus or such other appropriate writ or direction commanding the Assistant Educational Officer and the manager "to appoint and approve the petitioner as Part-time Sanskrit Teacher in the consequent vacancy of the 3rd respondent on her promotion to the post of UPSA."

4. As noticed already, respondent No.3 has relinquished (rightly or wrongly) promotion to the post of UPSA. Learned counsel for respondent No.3 submits that no one can compel her to accept the promotion. She is happy with what she gets as a Part-time teacher with full-time scale of pay. She denies the allegation that the manager has persuaded her to relinquish the promotion.

5. The manager in his turn submits that he has never persuaded respondent No.3 to relinquish the promotion. When respondent No.3, who was due for promotion, expressed her reluctance to accept promotion as LPSA, he had appointed another qualified teacher to the vacant post. It is true that the department has not yet approved the appointment. But the revision preferred before the Director of Public Instruction is pending consideration.

6. The grievance and heart burn of the petitioner is understandable. But it is beyond dispute that no employee can be compelled to accept promotion. It is true that respondent No.3 had in fact requested the manager on an earlier occasion, as revealed from Ext.R3 (a), to give her promotion to the post of Upper Primary School Assistant. But, learned counsel for respondent No.3 submits that in the changed circumstance, respondent No.3 thought that she would

be happy to continue in the post which she is now occupying.

7. So long as the manager has not violated any statutory provision contained in the Kerala Education Act and the Rules thereunder, this Court cannot step in and issue a direction as prayed for in the writ petition. It has to be noticed that there is no post of Part-time Sanskrit teacher in the school as on today. Therefore, obviously, the prayer made by the petitioner is undoubtedly superfluous if not unsustainable.

There is no merit in the writ petition. It is accordingly dismissed.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007